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APO AE 09213-0115  
GERMANY

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APR 02 2003

In re Application of :  
Walter Jospoh Mikulski :  
Application No. 09/490,859 :  
Filed: January 24, 2000 :  
Attorney Docket No. 1.827.99 :

**OFFICE OF PETITIONS**

**DECISION ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b) filed March 24, 2003, to revive the above-mentioned application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned on January 2, 2002, for failure to timely file an appropriate response to the non-final Office action mailed October 2, 2001, which set a shortened period for reply of three (3) months from its mailing date. No extension of time for reply available to petitioner under 37 CFR 1.136(a) was obtained; the application became abandoned on January 2, 2002.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of items (1) and (2) above.

As to item (1), no response to the non-final Office action was found among the application papers. Before a petition under 37 CFR 1.137(b) can be considered grantable, petitioner must file a proper reply to the non-final Office action either in the form of an amendment or a continuing application.

As to item (2), the petition fee of \$650.00 was not found with the petition papers. Before a petition under 37 CFR 1.137(b) can be considered grantable, petitioner must remit the petition fee in the amount of \$650.00.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (703) 308-6916  
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office  
2011 South Clark Place  
Customer Window, Mail Stop Petitions  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0010.



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